



Christopher J. McDonald
Senior Attorney
Public Policy
Northern Region

200 Park Avenue
New York, NY 10166
212 519 4164
Fax 212 519 4569
Christopher.McDonald@wcom.com

January 9, 2002

By Email & Overnight Courier

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
Commonwealth of Massachusetts
One South Station
Boston, MA 02110

Re: ***D.T.E. 01-20***

Dear Secretary Cottrell:

At yesterday's hearing in the above matter, Richard B. Lee appeared as a witness on behalf of AT&T and WorldCom on the subject of depreciation. During the course of his cross examination, counsel for Verizon sought to elicit from Mr. Lee proprietary information relating to WorldCom's depreciation and financial reporting lives. WorldCom objected to the questions. Rather than utilize the limited time for hearing testimony with attorney arguments over the propriety of Verizon's inquiry, the specific questions at issue were posed as a record request. For the reasons stated below, WorldCom hereby renews its objection to Verizon's record request and asks that the Department sustain the objection.

The specific information requested is as follows: "please provide for WorldCom their most recent financial reporting lives for the assets that are at issue in this proceeding" and "answer whether WorldCom uses the same depreciation lives for its local versus its long-distance operations." January 8, 2002 Hearing Transcript at 320:22-24, 322:1-17.

WorldCom objects on the grounds that the information sought is wholly irrelevant to this proceeding. This case involves Verizon's forward-looking economic costs to provide UNEs. WorldCom's own operational experience has no bearing on that issue. Indeed, the FCC has "reject[ed] the explicit or implicit assumption of most LEC commenters that company specific values, which reflect the costs of their embedded plant, are the best predictor of the forward-looking cost of constructing the network investment. . . . [To the contrary,] the forward-looking cost of constructing a

plant should reflect costs that an efficient carrier would incur, not the embedded cost of the facilities, functions, or elements of a carrier.”¹ As such, information about WorldCom’s network, operations, accounting, financial reporting, etc. is not relevant to the issues to be decided by the Department, which concern the modeling of a forward-looking local services network under the FCC’s TELRIC methodology, nor is such information likely to lead to the discovery of admissible evidence.

As the Department will recall, the information requested of WorldCom at the hearing is essentially identical to information Verizon requested of AT&T, but not WorldCom or any other party, in discovery. See, e.g., Information Request VZ-ATT-131 (a copy of AT&T’s supplemental response (minus the proprietary attachment) is enclosed for the Department’s convenience; the first portion of Verizon’s record request to WorldCom asks for some of the same information as was requested of AT&T in this information request). Per the Department’s August 31, 2001 Interlocutory Order, AT&T was eventually required to respond to this and other Verizon requests relating to its internal operations, but *only* because AT&T had presented a competing cost model – HAI 5.2a-MA – in this proceeding. Specifically, the Department held that the information requested by Verizon of AT&T was relevant for the limited purpose allowing Verizon to “develop its position” that it “can . . . undermine the credibility of the HAI model” if it could show that the model’s sponsor, AT&T, had “operations, practices and costs [that are] inconsistent with HAI 5.2a-MA.” Interlocutory Order at 12. Although some of the witnesses retained by WorldCom to critique Verizon’s cost model have also been retained by AT&T to support the HAI model, WorldCom is not a sponsor of the HAI model in this proceeding. As such, the logic of the Department’s ruling, which carved out a limited exception in which otherwise irrelevant intervenor information becomes relevant, is inapplicable.

Moreover, the fact that comparable information *was* sought by Verizon in discovery further counsels against permitting Verizon to seek the information at the hearing. Assume for the sake of argument that Mr. Lee simply could not recall the answers to Verizon’s questions and they resulted as a record request anyway (i.e., through the ordinary “faulty memory” scenario contemplated by the Department’s Ground Rules rather than because it was a convenient way to keep the hearing on schedule). Given that the Ground Rules state that record requests “shall not be used as a substitute for discovery,” can there be any doubt that a Verizon record request seeking information that actually had been requested from another party in discovery is simply Verizon attempting to take another bite at the discovery apple?

Finally, it should also be noted that Mr. Lee’s hesitance in responding to Verizon’s questioning was entirely reasonable. Aware that he had signed various agreements concerning the confidentiality of information learned in other proceedings in other jurisdictions, Mr. Lee was unsure at

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Tenth Report and Order, No. FCC 99-304, ¶ 90, (rel. Nov. 2, 1999) (“FCC’s Tenth USF Order”). See also *Id.*, Fifth Report and Order, No. FCC 98-279, ¶ 66 (rel. Oct. 28, 1998).

Page 3 of 3
Mary L. Cottrell
January 9, 2002

that moment as to what may or may not have been permitted or prohibited under those agreements. It would have been inappropriate to force Mr. Lee to testify at his own peril in the event that revealing confidential information violated the terms of any such agreement he may have signed previously.

For all the foregoing reasons, WorldCom respectfully requests that the Department sustain the objection such that WorldCom need not provide its proprietary information in response to Verizon's record request.

Very truly yours,

Christopher J. McDonald

cc (by email & overnight courier): Marcella Hickey, Esq., Hearing Officer
All Department Personnel on Service List
Bruce P. Beausejour, Esq.
Barbara Anne Sousa, Esq.
Ms. Barbara Landry
Robert N. Werlin, Esq.
cc (by email & U.S. Mail): Service List